



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 26, 2013

Ordinance 17543

Proposed No. 2013-0111.2

Sponsors Lambert

1 AN ORDINANCE authorizing the King County executive
2 to execute a thirty-year use agreement with Redmond North
3 Little League, a Washington nonprofit organization, for the
4 use, development, and construction of a baseball field and a
5 synthetic multiuse field at Redmond Ridge park, Redmond,
6 Washington.

7 STATEMENT OF FACTS:

- 8 1. King County, a home rule charter county and political subdivision of
9 the state of Washington, is the owner of the property, located at 22915 NE
10 Alder Crest Drive, Redmond, Washington, 98053, and illustrated in
11 Exhibit A of Attachment A to this ordinance.
- 12 2. Redmond North Little League ("RNLL") is a nonprofit Washington
13 corporation that is tax-exempt under section 501(c)(3) of the Internal
14 Revenue Code and is a community-based, open-membership public club
15 organized to provide public youth baseball programs for children between
16 five and thirteen years old.
- 17 3. King County has determined that a synthetic baseball field and
18 synthetic multiuse field at Redmond Ridge park will have significant
19 regional recreational value. Synthetic fields will allow for multiple uses

20 and users throughout the year, thus increasing public access and utilization
21 of park facilities.

22 4. Under Phase 1 of this project, RNLL will convert an existing baseball
23 field to a synthetic turf infield and relocate two batting cages, using
24 \$200,000 in Community Partnerships and Grants Program ("CPG") funds
25 and over \$300,000 in community resources.

26 5. Under Phase 2 of this project, RNLL will construct a multipurpose
27 synthetic field for baseball and soccer and receive an additional \$500,000
28 in CPG funds for this phase, contingent upon RNLL's ability to secure an
29 additional \$700,000 by September 1, 2013.

30 6. Ordinance 14509 authorized the department of natural resources and
31 parks to create new public recreation opportunities by empowering user
32 groups, sports associations, and community organizations, like RNLL, to
33 operate, maintain, and implement mutually agreed-upon capital
34 improvements for public recreation facilities on King County land, and
35 thereby address regional or rural recreation needs without incurring new
36 tax-funded operations and maintenance costs.

37 7. Use agreements are authorized under K.C.C. 4.56.150.E.

38 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

39 SECTION 1. The King County executive is hereby authorized to sign a use
40 agreement, substantially in the form of Attachment A to this ordinance, with Redmond
41 North Little League for the use, development and construction of a synthetic baseball and

42 a multiuse field at Redmond Ridge park, Redmond, Washington, and this ordinance
43 constitutes project authorization under Ordinance 17392.
44

Ordinance 17543 was introduced on 2/25/2013 and passed by the Metropolitan King County Council on 3/25/2013, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr.
Dembowski
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 4th day of April, 2013.


Dow Constantine, County Executive

Attachments: A. Use Agreement, dated March 19, 2013

RECEIVED
MAY 14 2013
KING COUNTY COUNCIL



USE AGREEMENT

between

**King County Department of Natural Resources and Parks, Parks and Recreation
Division**

and

Redmond North Little League

for the

Baseball Field Conversion

at

Redmond Ridge Park

This Agreement ("Agreement") is entered into by and between King County Department of Natural Resources and Parks, Parks and Recreation Division (hereinafter "the Division") and Redmond North Little League (hereinafter "RNLL") (collectively, the "Parties") for the use, development, and construction of a baseball field and a synthetic multi-use field (hereinafter collectively referred to as "Facility"), except as provided in Sections 2.7 and 2.8, at Redmond Ridge Park (hereinafter "Site").

In consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows.

ARTICLE 1. BACKGROUND

- 1.1. King County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Site, located at 22915 NE Alder Crest Dr. Redmond WA 98053, and described and depicted with greater particularity in Exhibit A to this Agreement.
- 1.2. RNLL is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. RNLL is a community-based, open-membership club organized to provide public youth baseball programs for 450 children.
- 1.3. RNLL has the experience, ability, and/or resources to develop synthetic baseball field and associated facilities at the Site.
- 1.4. The Division has determined that a synthetic baseball field and synthetic multi-use field located at the Site will have significant regional and/or rural public recreation value.
- 1.5. King County Ordinance 14509 authorized the Department of Natural Resources and the Division to create new public recreation opportunities by empowering user groups,

sports associations, and community organizations to develop mutually agreed upon capital improvements for public recreation facilities on King County land, and thereby address regional and/or rural recreation needs without increasing tax-funded operations and maintenance costs.

- 1.6. Allowing RNLL to develop certain mutually-agreed upon capital improvements, including synthetic baseball and multi-use field at the Site, will serve to implement the authority provided in Ordinance 14509, and to achieve the goals set forth in Section 1.5.
- 1.7. King County Code 4.56.150(E) and Revised Code of Washington 35.21.278 authorize King County to enter into agreements with non-profit organizations that provide a service to the public and make improvements to King County property.
- 1.8. The Division is willing to allow RNLL to develop the Facility at the Site under the terms and conditions set forth in this Agreement, and to give RNLL scheduling priority over a term of 10 years pursuant to Section 2.10.

ARTICLE 2. CONSIDERATION

- 2.1 The effective date ("Effective Date") of this Agreement is the date of execution by the last party to execute this Agreement. RNLL agrees to design and construct Phase 1 of the Facility on the Site consistent with the terms and conditions set forth in this Agreement. Phase 1 of Facility will include converting the existing baseball field to a synthetic turf infield and building two batting cages to be located beyond the east outfield fence of the Facility, all as set forth in Exhibit A to this Agreement. If RNLL raises sufficient funds, RNLL will construct Phase 2 of the Facility on the Site pursuant to Section 2.7. Phase 2 of the Facility includes a single multi-purpose synthetic field for baseball and soccer.
- 2.2 NOT USED
- 2.3 RNLL agrees to assume responsibility for design, permitting, and construction of the Facility as set forth in this Agreement.
- 2.4 RNLL has inspected and knows the condition of the Site, and agrees to accept the Site in AS IS condition.
- 2.5 The Division does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Site, and no official, employee, representative, or agent of King County is authorized to represent otherwise.
- 2.6 After the determination by the Division, pursuant to Section 3.1, that RNLL has obtained and has in hand \$311,850 of cash or cash equivalents of donated materials, in kind services, and other consideration to RNLL (including vendor discounts or concessions

on products) to be used toward construction of Phase 1 of the baseball field portion of the Facility. As used throughout this Agreement, "in kind services" may include donated professional services, management services, manpower, and other services. Upon the commencement of construction, the Division will provide a Community Partnership Grant (CPG) to RNLL in the amount of \$200,000. These funds shall be applied towards the permitting and capital cost to construct Phase 1 of the Facility at the Site per Exhibit A to be disbursed as follows:

<u>Milestone Triggering Payment</u>	<u>CPG Fund Disbursal</u>	<u>Funds To Be Used For</u>	<u>Anticipated Milestone</u>
Commencement of Construction	\$200,000	Synthetic surface	September 2013

RNLL will be solely responsible to secure and provide all other funding needed to design and construct Phase 1 of the Facility. The present total estimated market cost to design, permit, manage, and construct Phase 1 of the Facility is \$511,850 including donated materials, services, and other vendor consideration to RNLL. The Division will be under no obligation, directly or indirectly, to pay for any labor, material, or improvement associated with the Site or the Facility in excess of the \$200,000 capital outlined above. This shall not prevent RNLL from seeking or being considered for the award of other CPG or Youth Sports Facility Grants ("YSFG").

- 2.7 The Division will continue to work with RNLL to develop Phase 2, construction of a synthetic multi-use field portion of the Facility per Exhibit A, subject to successful additional fundraising by RNLL. The present total estimated market cost to construct Phase 2 of the Facility is \$1,200,000. This cost includes the fair market value of donated materials, in kind services, and other consideration to RNLL. If RNLL demonstrates to the satisfaction of the Division that it has secured funds, resources, and other consideration in the amount of \$700,000 by September 1, 2013, the Division will contribute an additional \$500,000 of 2013 CPG funding towards the completion of Phase 2 of the Site to be disbursed as follows:

<u>Milestone Triggering Payment</u>	<u>CPG Fund Disbursal</u>	<u>Funds To Be Used For</u>	<u>Anticipated Milestone</u>
Fundraising of \$700,000	\$450,000	Construction of Phase 2	September 1, 2013
Construction Complete and Priority Use Agreement Approved	\$50,000	Synthetic surface	April 2014

If RNLL fails to secure funds, commitments, resources, or other consideration in the

amount of \$700,000 for Phase 2 by September 1, 2013, then the 2013 CPG Funding of \$500,000 will be reprogrammed for other CPG projects and will no longer be available for RNLL. If after the September 1, 2013 deadline, RNLL is successful in reaching the Milestone Triggering Fundraising of \$700,000, nothing in this Agreement shall prohibit RNLL from re-applying for CPG Funding.

- 2.8. For the Term of this Agreement, as defined in Section 2.10, RNLL is granted a non-exclusive license to use the baseball field portion of the Facility pursuant to the terms of this Agreement. First priority public use of the baseball field portion of the Facility and the Site shall be provided to the public youth baseball programs provided by RNLL pursuant to the terms and conditions set forth in Exhibit B. RNLL acknowledges and agrees that additional public access to and use of the Facility is a material consideration for the Division's execution of this Agreement. RNLL shall be granted a non-exclusive license to use the synthetic multi-use field portion of the Facility pursuant to the terms of this Agreement once (a) the conditions of Section 2.7 are met; and (b) an amendment setting forth the annual hours of priority use and RNLL's Master Schedule for the use of the synthetic multi-use field portion of the Facility.

For the baseball field portion of the Facility, RNLL shall be entitled to up to 399 hours of priority use per calendar year. If the synthetic multi-use field portion of the Facility is constructed, this Agreement will be amended to establish the number of hours available for priority use of it by RNLL. The terms of such an amendment will be agreed upon prior to CPG Funding dispersal of the final \$50,000 as set forth in Section 2.7 above.

2.9. USER FEES

2.9.1 In consideration of RNLL's substantial investment in cash, in-kind, and other contributions towards construction of the baseball field portion of the Facility, as well as, the public youth baseball programs provided by RNLL, RNLL shall receive a facility use fee credit not to exceed a total of \$311,850. RNLL will be charged the Division's then-standard hourly synthetic field use and lighting fees for use of the baseball field portion of the Facility ("Use Fees"). The current (2012-2013) rates are \$55 an hour for synthetic field use and \$23 per hour surcharge for lights (if needed). The Division will grant RNLL a credit toward its charges for use of the Facility. Each year during the ten (10) year Term of this Agreement up to \$31,185 per year shall be credited toward RNLL's baseball field Use Fees for that year, RNLL may carry over any unused credits from year to year through the term of this Agreement.

2.9.2 If Phase 2, the construction of the synthetic multi-use field portion of the Facility, is completed in accordance with Section 2.7, then in consideration of RNLL's substantial investment in cash, donated materials, in-kind services, and other consideration towards its construction, as well as, the public youth baseball programs provided by RNLL, RNLL shall receive a facility use fee credit for the synthetic multi-use field portion of the Facility not to exceed a total of \$700,000.

RNLL will be charged the Division's then-standard hourly synthetic field use and lighting fees for use of the synthetic multi-use field portion of the Facility ("Use Fees"). The current (2012-2013) rates are \$55 an hour for synthetic field use and \$23 per hour surcharge for lights (if needed). The Division will grant RNLL a credit toward its charges for use of the synthetic multi-use field portion of the Facility. Each year during the ten (10) year Term of this Agreement up to \$70,000 per year shall be credited toward RNLL's synthetic multi-use field Use Fees for that year. RNLL may carry over any unused credits from year to year through the term of this Agreement.

- 2.10. At least twelve (12) months before the expiration of (a) this Agreement's Term or (b) the first 10 year extension period, provided that RNLL is then in compliance with the terms and conditions of this Agreement, Division and RNLL will begin negotiations regarding extending the agreement for an additional ten year period to provide for synthetic surface replacement and future credits, if any, toward RNLL's Facility Use Fees in consideration for additional Facility investments if made by RNLL. Prior to the expiration either of the term or the first 10 year extension period, King County shall not negotiate with any person or entity other than RNLL regarding a Use Agreement for the fields.
- 2.11. The term of this Agreement shall be ten (10) years from the Effective Date ("Term"), provided that, the parties may extend the agreement for up to two separate additional ten year periods based on negotiations provided for in Section 2.10. RNLL will notify Division in writing at least twelve (12) months prior to the expiration of this Agreement whether RNLL desires to negotiate renewal or extension of the Agreement (including any proposed modifications). The Parties may modify this Agreement during the Term, as a condition of renewal, extension, or during a renewal or extension term, consistent with Section 2.10. Any renewal, extension, or amendment is subject to approval by ordinance.
- 2.12. King County shall retain ownership of the Site and the Facility, including all improvements, permanent fixtures, and county-purchased equipment.
- 2.13. In recognition that the design, development, and construction of the Facility and Site will benefit the Division and its park users upon completion, the Division agrees to coordinate with RNLL and to use its best efforts to assist with and facilitate the issuance of any federal, state, county, or local permits or approvals necessary for construction at the Facility and Site to begin. RNLL understands, acknowledges, and agrees that the Division's assistance and facilitation shall not and does not constitute King County's official endorsement or approval of RNLL's plans, drawings, design documents, or construction for purposes of any applicable laws, regulations, codes, ordinances, guidelines, or industry standards (collectively, "authorities"). As between RNLL and the Division, RNLL will be solely responsible to comply with all applicable authorities and to obtain all necessary permits, approvals, and endorsements.
- 2.14. The Division personnel or agents may inspect the Facility construction project at any

time provided that such persons observe due regard for workplace safety and security. The Division may require RNLL or its contractors to stop work if the Division deems work stoppage necessary to remedy construction defects or to address risks to health, safety, or welfare. RNLL specifically understands, acknowledges, and agrees that at a minimum, the Division will inspect the Facility construction project and approve work progress at the following milestones:

- A. Completed set of construction plans, drawings, specifications, and related design documents for the Facility construction project;
- B. Preconstruction meeting with RNLL and primary contractor when all permits and approvals are in hand;
- C. Demolition, excavation of Site complete;
- D. Site plumbing complete and Site prepared for installation of base material;
- E. Initial compaction of each and every lift of base material installed on Site;
- F. Final compaction of base material;
- G. Installation of synthetic turf carpet surface prior to fill;
- H. G-max or equivalent shock test of synthetic turf carpet with completed fill; and
- I. Installation of Facility amenities other than playing surface (fencing, paving, bleachers, etc.).

The Division may hire an outside consultant to inspect and approve excavation, drainage improvements, and fill compaction work. If the Division does so then the Division will forward the consultant's invoices to RNLL for payment. RNLL hereby agrees to timely pay the consultant's invoices.

- 2.15. When RNLL considers that all work or work associated with the Facility is substantially complete, RNLL shall give written notice to the Division. The Division will promptly inspect the work and, if it does not agree that the work is substantially complete, the Division will prepare a list of items to be completed or corrected ("Punch List"). RNLL or its contractor shall promptly complete or correct all Punch List items at the sole cost of RNLL or its contractor, as they may decide between them. For purposes of this Agreement, "substantially complete" means that:

- A. RNLL and the Division have full and unrestricted use and benefit of the Facility for the purpose intended;

- B. All the systems and parts of the Facility are functional;
- C. Only minor incidental work or correction or repair remains to complete all Facility construction requirements; and
- D. RNLL's contractor has provided all occupancy permits and easement releases, to the extent that any are required or applicable, to the Facility.

2.16. WARRANTIES.

2.16.1. With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Facility, RNLL shall:

- A. Obtain all warranties, express or implied, that would be given in normal commercial practice from suppliers, manufacturers, contractors, or installers;
- B. Require all warranties be executed, in writing, for benefit of King County;
- C. Enforce all warranties for the benefit of King County; and
- D. Be responsible to enforce any warranty of a contractor, subcontractor, manufacturer, or supplier.

2.16.2. If, within an applicable warranty period, any part of the Facility or work performed to construct the Facility is found not to conform to specifications, permit requirements, or industry standards, RNLL shall correct it promptly after receipt of written notice from the Division to do so. If the Division determines that RNLL's corrective action is not satisfactory and/or timely performed, then the Division may either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party, and invoice RNLL for the cost to remedy the problem. RNLL shall promptly reimburse the Division for all costs, expenses, or damages incurred by the Division, including but not limited to the cost to remedy the problem. An invoice is deemed received by RNLL three (3) days after deposit in the U.S. mail with proper address and postage. Invoices must be paid within sixty (60) days. The Division will add a late fee of five percent (5%) to any invoice not timely paid. Any invoice outstanding sixty (60) days after receipt will be sent to collections.

2.16.3. The warranty-related remedies provided in this Section 2.16 are in addition to any other rights or remedies provided elsewhere in this Agreement or by applicable law.

2.17. ADDITIONAL REVENUE SOURCES.

- 2.17.1. Signs. Subject to Sections 4.11 and 4.12 of this Agreement, King County agrees to permit RNLL to affix signs to the fences, light posts, or other areas of the Facility, and to charge advertising fees for such signs. RNLL shall be permitted to retain all such revenue.
- 2.17.2. Concessions. King County agrees to permit RNLL to create a concession stand and to sell concessions, including food, beverages, and RNLL logo wear at the Facility. RNLL shall be permitted to retain all such revenue.
- 2.17.3. Donor Recognition. Subject to Sections 4.11 and 4.12 of this Agreement, King County agrees to permit RNLL to create a pathway, wall of bricks or other donor recognition area with the names of donors on the bricks. RNLL shall be permitted to retain all such donation revenues.

ARTICLE 3. CONSTRUCTION OF FACILITY

3.1 CAPITAL IMPROVEMENTS.

- 3.1.1 RNLL will raise and expend \$311,850 in cash, in kind services, donated materials, and other consideration towards Phase 1 of the development and construction of the Facility on the Site (baseball field). RNLL will serve as the supervisory not-for-profit corporation for development and construction of the Facility. RNLL shall design, develop, and construct facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, mitigations, and all other requirements in coordination with King County the Division CPG staff. RNLL understands, acknowledges, and agrees that it may not undertake or commence any construction activities on the Site until RNLL can demonstrate to the Division' satisfaction that RNLL has obtained and has in hand all \$311,850 of cash or cash equivalents, including binding commitments for donated professional services, materials, equipment, and other in-kind contributions to be used toward the construction of Phase 1 of the Facility. For purposes of this Section 3.1, "construction activities" do not include preliminary activities such as surveying, mapping, drainage test pits, installation of temporary fencing, or other low- impact or readily reversible actions.
- 3.1.2 Subject to successful fundraising, as contemplated in Section 2.7, RNLL will raise and expend \$700,000 in cash, in kind services, donated materials, and other consideration towards Phase 2 of the development and construction of the Facility on the Site (synthetic multi-use field RNLL will serve as the supervisory not-for-profit corporation for development and construction of the Facility. RNLL shall design, develop, and construct facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, mitigations, and all other requirements in coordination with King County the Division CPG staff. RNLL understands, acknowledges, and agrees that it may not undertake or commence

any construction activities on the Site until RNLL can demonstrate to the Division' satisfaction that RNLL has obtained and has in hand all \$700,000 of cash or cash equivalents, including binding commitments for donated professional services, materials, equipment, and other in-kind contributions to be used toward the construction of Phase 2 of the Facility. For purposes of this Section 3.1, "construction activities" do not include preliminary activities such as surveying, mapping, drainage test pits, installation of temporary fencing, or other low- impact or readily reversible actions.

- 3.2 EXCLUSIVE POSSESSION DURING CONSTRUCTION. RNLL shall be entitled to exclusive possession and use of that portion of the Site designated for development and construction of each Phase of the Facility during the design, development, and construction phases. This right of exclusive possession and use by RNLL is subject to King County's entry, inspection, acceptance, and audit rights under Sections 2.14, 4.12, 5.14, and 5.15 of this Agreement.
- 3.3 DESIGN. RNLL has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who will prepare a design for the Site and the Facility and exterior landscaping, which visually blends with the setting. The Division shall review the design plans for the Site in concept and reserves the right to approve the final design of the Site and the Facility, consistent with established King County zoning, design code, or both. Division approval shall not constitute regulatory approval by King County.
- 3.4 CONSTRUCTION/SITE WORK/FENCING. RNLL will be solely responsible for the site work, required permits, and grading at the Facility. RNLL will ensure the work area is properly barricaded, and will ensure that signage is installed directing unauthorized persons not to enter onto the construction site during any phase of development or construction. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, construction sites will be kept clean and organized during development periods. RNLL will be responsible for site security, traffic, and pedestrian warnings at the Facility during the development and construction phases.
- 3.5 CONSTRUCTION DEADLINES. RNLL is required to complete the development and construction of each Phase of the Facility within one (1) year from the date that RNLL receives all funding, in-kind contributions, and the permits necessary to commence construction on the Phase of the Facility.
- 3.6 RELOCATION OF UTILITY LINES. RNLL will be responsible to relocate and improve storm drains, sewers, water lines, and other utilities, if any, as required to complete development and construction of the Facility.
- 3.7 ALTERATION OF SITE OR FACILITY AFTER CONSTRUCTION. After the Facility is completed and accepted by RNLL and the Division, as defined herein, RNLL will not make any material alteration to the Site or to the Facility, including any

changes to the landscaping, without express, written consent by the Division. RNLL intends to construct two (2) batting cage facilities on the Facility beyond the east fence of the Site at the locations specified in Exhibit A.

- 3.8 DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES. RNLL will be responsible to obtain and pay for all necessary permits, fees, and expenses associated with the development and construction of the Facility.
- 3.9 PUBLIC WORKS LAWS. To the extent applicable, RNLL will comply with all public works laws, regulations, and ordinances, including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278). RNLL will indemnify and defend King County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws, regulations, and ordinances in connection with the improvements. Without limiting the foregoing, RNLL understands, acknowledges, and agrees that before beginning construction of the Facility on the Site, RNLL must execute and deliver to King County a performance and payment bond in an amount equal to one hundred percent (100%) of the estimated full value of each Phase of the Facility's construction contracts (estimated to be in total not less than \$1.7 million), on a form acceptable to King County with an approved surety company and in compliance with RCW Ch. 39.08. King County must be named as the beneficiary of the payment and performance bond. RNLL must notify the surety of any changes in the work. RNLL must promptly furnish additional bond security to protect King County and persons supplying labor or materials required to construct the Facility if (a) King County has a reasonable objection to any surety; (b) any surety fails to furnish reports on its financial condition pursuant to King County's request; or (c) the estimated cost of the Facility increases beyond the bond amount.
- 3.10 CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS. RNLL will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney's fees and costs, arising out of or in connection with the design, development, and construction of the Facility (hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County. In the event it is determined that RCW 4.24.115 applies to this Agreement, RNLL and its subcontractors shall agree to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from their officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

- 3.11 CONTRACTOR/CONSULTANT DESIGN/CONSTRUCTION INSURANCE REQUIREMENTS. RNLL will require its design and construction contractors to procure and maintain, for the duration of the design and or construction of the Facility, the following insurances:
- 3.11.1 Commercial General Liability Insurance General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering COMMERCIAL GENERAL LIABILITY. \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
- 3.11.2 Automobile Liability. Coverage shall as least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, \$1,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.
- 3.11.3 Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- 3.11.4 Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy. Limit: \$ 1,000,000.
- 3.11.5 BUILDER'S RISK INSURANCE. RNLL will require its construction contractors to procure and maintain, for the duration of the Construction Phase of the Facility, builder's risk insurance covering interests of King County and the construction contractor in the work. The builders risk insurance will be in the amount of the completed value of the Facility with no coinsurance provisions. Builder's risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings, and debris removal. This builder's risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by King County upon written request by RNLL and written acceptance by King County. Any increased deductibles

accepted by King County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by RNLL and the Division.

- 3.12 PROFESSIONAL ERRORS AND OMISSIONS. RNLL must require its professional service providers to carry insurance meeting all requirements set forth in Section 3.11 of this Agreement. In addition, RNLL must require its professional service providers to carry professional liability errors and omissions insurance in an amount of not less than \$1,000,000 per claim/aggregate. RNLL must require its professional service providers to provide copies of all insurance certificates or insurance policies to King County upon request.
- 3.13 SUBCONTRACTORS. RNLL will require its construction contractors during the Design and Construction Phase to include all subcontractors as insured under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the same insurance requirements as stated herein for the construction contractor.
- 3.14 INSURANCE COVERAGE TYPE AND DURATION. Each insurance policy must be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior approval by King County Office of Risk Management. If coverage is approved and purchased on a "claims made" basis, RNLL warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of contract termination or expiration, and/or conversion from a "claims made" form to an "occurrence" coverage form.
- 3.15 VERIFICATION OF COVERAGE. RNLL will furnish the Division with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the commercial general liability insurance of the construction contractor before commencement of the work. Before any exposure to loss may occur, RNLL will file with the Division a copy of the builder's risk insurance policy that includes all applicable conditions, exclusions,
- 3.16 ACCEPTABILITY OF INSURERS. Unless otherwise approved by the Division, the following provisions apply exclusively during the Design and Construction Phase:
- 3.16.1 Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.
- 3.16.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then RNLL will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to the Division with

certificates and endorsements, for approvals.

- 3.16.3 The required liability insurance policies (except Workers Compensation and Professional) are to be endorsed to:
- Name "King County, its officers, officials, agents and employees" as additional insured with respect to use of the Site as outlined in this Agreement (Form CG 2026 or its current equivalent);
 - Such coverage shall be primary and non-contributory insurance as respects King County;
 - State that RNLL's or its contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability;
 - State that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after forty-five (45) days prior written notice to King County.
- 3.17. WAIVER OF SUBROGATION. RNLL will cause its contractors and subcontractors and their insurance carriers to release and waive all rights of subrogation against King County during the Design and Construction Phase to the extent a loss is covered by property insurance in force. Except as otherwise provided in Section 3 of this Agreement, RNLL hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under the respective fire insurance policies of its contractors, subcontractors, or any of them, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of RNLL or King County.
- 3.18. INSURANCE PROVISIONS ARE MATERIAL TERMS. By requiring such minimum insurance as described in this Section 3, King County shall not be deemed or construed to have assessed the risks that may be applicable to RNLL under this Agreement. RNLL shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within this Section 3 shall be deemed to limit the scope, application, and/or limits of the coverage afforded by the policies specified herein, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policies. Nothing contained within this Section 3 shall effect and/or alter the application of any other provision contained within this Agreement. Failure by RNLL, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements shall constitute a material breach of this Agreement.

ARTICLE 4. USE OF FACILITY

- 4.1. After the completion of each respective Phase (Phase 1: baseball field and Phase 2: synthetic multi-use field portion), and for the Term of this Agreement, as defined in Section 2.11, the Division agrees that first priority public use of the completed portions of the Facility shall be provided to the public youth baseball programs provided by RNLL pursuant to the terms of this Agreement and as set forth in the RNLL Master Schedule which will be incorporated into this Agreement by amendment for 2014 only and attached as Exhibit B. Notwithstanding Section 5.24, subsequent annual updates of Exhibit B, as contemplated by Section 4.4, will not require Council approval. RNLL acknowledges and agrees that additional public access to and use of the Facility is a material consideration for the Division's execution of this Agreement.
- 4.2. STEWARDSHIP. RNLL must be a good steward of the Facility and Site. All approved activities and use by RNLL shall be considerate of the capital, programmatic, and environmental value of the Facility and Site to the greatest extent possible. All approved construction, maintenance, and other modifications by RNLL shall strictly adhere to all applicable environmental laws and regulations at all times, including such signage, concession or donor recognition area.
- 4.3. MITIGATION/FACILITY USE RULES. The Division and RNLL shall mutually develop and implement a Good Neighbor/Facility Use Policy ("Use Rules") in coordination with other users of the Site to ensure positive relations with the surrounding community, as well as other current or future Site users. Use Rules, once developed, shall become an Exhibit to this Agreement and shall be incorporated by amendment. The Use Rules shall be posted in clear view at the Facility and/or integrated into posted or otherwise distributed use rules for the Site.

Mitigation efforts for traffic, noise, parking, or other neighborhood impacts shall be thorough, ongoing, and in good faith.

- 4.4. FACILITY SCHEDULING. After completion of a Phase, public youth baseball programs provided by RNLL shall have first priority public use of respective portion of the Facility. All costs associated with RNLL's public youth baseball programming and use of the Facility will be the responsibility of RNLL. All public use of the Facility by additional public users groups shall be scheduled by and through the Division, the cost of which shall be the Division's responsibility. By January 15 of each calendar year, starting in 2015, RNLL shall provide the Division with a master schedule (hereinafter "RNLL Master Schedule" for each portion of the Facility and replace the previous year's Master Schedule) of its anticipated use for that year (e.g., hours and days of use) in order that the Division may schedule Facility use by others after RNLL's use is scheduled. The Parties recognize that the RNLL Master Schedules may require periodic supplementation to accommodate RNLL's changing practice needs and game schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), RNLL shall timely provide the Division with a revised monthly schedule if RNLL's anticipated field use will deviate from the applicable RNLL Master Schedule. Any requested modifications to the

RNLL Master Schedules shall be approved by the Division unless (a) the request is unreasonable or (b) the time requested by RNLL is already scheduled by the Division for non-RNLL use and cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Facility.

- 4.5 USE. RNLL's use of the Facility shall be limited to providing public programming and other activities for approved users as follows:
- A. Public youth baseball programs;
 - B. Other approved activities that are appropriate for synthetic sportsfields.
- 4.6 INCIDENTAL USES. RNLL may conduct tax-exempt fundraising activities to support the Site, the Facility, and RNLL's own beneficial or charitable mission as a not-for-profit Washington corporation, provided that such fundraising activities shall not displace public use of the Site or the Facility. Such activities shall be shown on RNLL's Master Schedule.
- 4.7 SECURITY AND NUISANCE DURING USE. RNLL will take reasonable precautions to secure the Facility during use by RNLL. RNLL will use the Site and the Facility for no unlawful purposes and will not use or occupy the Site in any manner which would constitute a public nuisance or otherwise violate federal, state, or local laws.
- 4.8 SITE MAINTENANCE PLAN. The Division shall operate and maintain the Site after the Facility improvements described herein are completed and the Division has given final approval and acceptance of these improvements.
- 4.9 PERFORMANCE REPORT. At the end of each calendar year during the Term, RNLL shall furnish the CPG project manager with a summary of the prior year's use by RNLL for approved activities on the Site or at the Facility.
- 4.10 LIMITED USE. RNLL shall use the Facility for no business or purpose other than as explicitly provided in this Agreement or as otherwise generally permitted to members of the public. Other RNLL activities may be allowed on a case-by-case basis with prior written approval of the Division, which shall not be unreasonably withheld.
- 4.11 SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by RNLL nor allowed by RNLL to be exhibited, inscribed painted, or affixed on any part of the Facility without the prior written approval of the Division, which shall not be unreasonably withheld (as provided in Section 2.17 of this Agreement). All new Facility and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by King County, unless RNLL receives prior written approval from the Division to do otherwise. Written approval shall be requested through the Division's liaison. If RNLL violates this provision, the Division may remove the sign without any liability and may charge the expense

incurred by such removal to the RNLL. All signs erected or installed pursuant to the Division' prior written approval shall also comply with any applicable federal, state, or local statutes, ordinances or regulations.

- 4.12 RIGHT TO INSPECT. King County at its discretion reserves the right to review and approve RNLL's use of the Facility and compliance with this Agreement. If the Division does not approve of RNLL's use and compliance, the Division will timely notify RNLL in writing of the specific items that the Division deems objectionable. RNLL agrees to undertake reasonable corrective action within a time period agreed to by the Parties, or if no time period is agreed, within sixty (60) days.
- 4.13 MINIMUM SCOPE OF INSURANCE FOR RNLL. In addition to insurance requirements set forth in Section 3 that are applicable to the Design and Construction Phase, RNLL will at a minimum maintain insurance during from the inception of this Agreement during the Design/Construction Phase and the Phase that covers RNLL's activities and usage of the Facility and Site as follows:
- 4.13.1 COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability insurance (Insurance Services Office form number (CG 00 01), covering commercial general liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate.
- 4.13.2 Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, \$1,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.
- 4.13.3 Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- 4.13.4 Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy. Limit: \$1,000,000.
- 4.14 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self- insured retention of the policies will not limit or apply to King County and

will be the sole responsibility of RNLL.

4.15 OTHER INSURANCE PROVISIONS. The insurance policies required by Section 4 of this Agreement shall also contain or be endorsed to contain the following provisions where applicable.

4.16 LIABILITY POLICIES.

4.16.1 Each insurance policy will be written on an "occurrence" form.

4.16.2 King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities pursuant to this Agreement.

4.16.3 RNLL's comprehensive general liability insurance coverage will be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents will not contribute with RNLL's insurance or benefit RNLL in any way

4.16.4 Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to RNLL and the Division.

4.17 ACCEPTABILITY OF INSURERS.

4.17.1 Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.

4.17.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then RNLL will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.

4.18 WAIVER OF SUBROGATION. RNLL and its insurance carriers will release and waive all rights of subrogation against King County to the extent a loss is covered by property insurance in force. RNLL hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of RNLL or King County.

4.19 INSURANCE LIMITS AND DOCUMENTATION.

4.19.1 By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. RNLL will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.

4.19.2 RNLL will furnish the Division with certificates of insurance and endorsements as required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for RNLL's insurance are to be on forms approved by King County and are to be received and approved by King County prior to the Effective Date of this Agreement. The Division reserves the right to require complete certified copies of all required policies at any time.

4.20 KING COUNTY INSURANCE.

4.20.1 LIABILITY EXPOSURE. RNLL acknowledges, agrees, and understands that King County is self-insured for all of its liability exposures, including but not limited to worker's compensation. King County agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement, or, at King County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. King County agrees to provide RNLL with at least thirty (30) days prior written notice of any change in its self-insured status and will upon request provide RNLL with a letter of self-insurance as adequate proof of insurance.

ARTICLE 5. GENERAL TERMS AND CONDITIONS

5.1 NOTICE. Notice will be given as follows:

If to the Division:

T.J. Davis, CPG Manager
King County Parks and Recreation Division
201 South Jackson St, Suite 0700
Seattle, WA 98104-3855
Email: tj.davis@kingcounty.gov
Phone: (206) 263-6214

If to RNLL:

J.D. Klein
Redmond North Little League
P.O. Box 107
Redmond, WA 98073-0107
Email: president@rnll.org
Phone: (206) 612-9200

- 5.2 NONDISCRIMINATION. RNLL will comply with King County Code ("K.C.C.") Chapter 12.16 regarding nondiscrimination in employment, K.C.C. Chapter 12.17 regarding nondiscrimination in contracting, and K.C.C. Chapter 12.18 regarding fair employment practices.
- 5.3 EMPLOYMENT. RNLL does not anticipate hiring any employees to develop the Facility or otherwise perform its obligations under this Agreement. If RNLL should elect to do so, however, RNLL agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, gender identity or expression, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship) and advertisement.
- 5.4 SERVICES AND ACTIVITIES. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, gender identity or expression, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements.
- 5.5 OTHER NONDISCRIMINATION LAWS. RNLL shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.
- 5.6 ASSIGNMENT. RNLL may not assign this Agreement or any interest therein without King County's prior approval, which shall not be unreasonably withheld. King County will have the right to sell or otherwise transfer or dispose of the Site or the Facility, or to assign this Agreement or any interest of the County hereunder, provided that in the event of sale or transfer of the Site or the Facility, King County will arrange for the purchaser or transferee to assume the Agreement and King County's obligations hereunder. King County will not otherwise assign this Agreement or any interest of King County hereunder unless the assignee or purchaser agrees to assume the Division's obligations hereunder.
- 5.7 ADVERTISING RESTRICTIONS. RNLL understands that the advertising of tobacco products as defined in King County Ordinance No. 10615 and spirits as defined in King County Ordinance No. 14509 is strictly prohibited. RNLL further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the King County Parks and Recreation Division

("Director"). If the Director imposes additional restrictions, a copy of the restrictions will be included in an attachment hereto over time. Therefore, RNLL expressly covenants that neither it nor any of its sponsors or concessionaires will at any time display, promote, or advertise any tobacco products, spirits, or other subject matter expressly prohibited by the Director. RNLL further agrees that any violation of this Section 5.4 by it will be a material breach of its contractual obligations to the Division pursuant to this Agreement.

- 5.8 SOLICITING. Except as otherwise provided in this Agreement, canvassing, soliciting, or peddling in the Site, the Facility, or in adjacent areas are each prohibited without the prior written approval from the Division.
- 5.9 POWERS OF THE COUNTY. Nothing contained in this Agreement will be considered to diminish the governmental or police powers of King County.
- 5.10 FORCE MAJEURE. The performance of this Agreement by either party is subject to acts of God, war, government regulation or advisory, disasters, fire, accidents or other casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or curtailment of transportation services or facilities, cost or availability of power, or similar causes beyond the control of either party making it illegal, impossible, or impracticable to hold, reschedule, or relocate the RNLL's use of the Site or the Facility as contemplated herein. Either party may terminate or suspend its obligations under this Agreement if such obligations are prevented by any of the above events to the extent such events are beyond the reasonable control of the party whose reasonable performance is prevented.
- 5.11 AGREEMENT IS PUBLIC DOCUMENT. This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 5.12 TAXES. RNLL agrees to pay on a current basis all applicable taxes or assessments levied on its activities; PROVIDED, however, that nothing contained herein will modify RNLL's right to contest any such tax, and RNLL will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.
- 5.13 NO RNLL LIENS. RNLL acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of King County in the fee interest in the Site or in the Facility, or to charge fees for any claim in favor of any person or entity dealing with RNLL, including those who may furnish materials or perform labor for any construction or repairs. If any such liens are filed, King County may, without waiving its rights and remedies for breach, and without releasing RNLL from its obligations under this Agreement, require RNLL to post security in form and amount reasonably satisfactory to King County or to cause such liens to be released by any means King County deems proper, including payment upon satisfaction of the claim giving rise to the lien. RNLL will pay to King County upon demand any sum paid by King County to remove the liens. Further, RNLL agrees that it will save and hold King County harmless

from any and all loss, cost, or expenses based on or arising out of the asserted claims or liens, except those of the lender, against this Agreement or against the right, title and interest of King County in the Site and the Facility or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by King County to remove such liens, and in enforcing this Section 5.13. Additionally, it is mutually understood and agreed that this Section 5.13 is intended to be a continuing provision applicable to future repairs and improvements after the initial development and construction of the Site and the Facility.

- 5.14 RECORDS, AUDITS AND INSPECTIONS. During this Term of this Agreement, RNLL's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.
- 5.15 ENTRY BY KING COUNTY. King County may enter the Site or the Facility during RNLL's usage for any reason. Any person or persons who may have an interest in the purposes of King County's visit may accompany King County. King County has the right to use any and all means that King County deems proper to open doors and gates to obtain entry to the Site or to the Facility.
- 5.16 COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Facility, RNLL and its members shall comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA). RNLL specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County, and further agrees that King County does not waive this provision by giving notice of demand for compliance in any instance.
- 5.17 INTERPRETATION OF COUNTY CODE AND RULES. If there is any question regarding the interpretation of any provision of King County Code or any King County rule or regulation, King County's decision will govern and will be binding upon RNLL.
- 5.18 PERMITS AND LICENSES. RNLL will obtain and maintain, at its own costs and expense, all necessary permits, licenses, and approvals required for the activities contemplated under this Agreement.
- 5.19 RISK OF LOSS. All personal property of any kind or description whatsoever on the Site or the Facility shall be at RNLL's sole risk, and King County will not be liable for any damage done to, or loss of, such personal property. However, RNLL will not be responsible for losses or claims of stolen property during King County-scheduled use of the Site or the Facility by persons or entities other than RNLL.

5.20 ENVIRONMENTAL LIABILITY.

- 5.20.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 5.20.2 RNLL shall not, without first obtaining the Division' written approval, apply, store, deposit, transport, release, or dispose of any Hazardous Material, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, on the Facility or Site. All approved application, storage, deposit, transportation, release, and disposal shall be done safely and in compliance with applicable laws.
- 5.20.3 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that RNLL might have against King County under federal or state environmental statutes that arises from Hazardous Materials deposited or released on the Site by King County. RNLL may not, however, assert such a claim to the extent that RNLL creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of RNLL performing its rights or obligations under this Agreement.
- 5.20.4 If RNLL discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against King County it shall immediately notify the Division in writing. RNLL shall provide such notice not more than ten (10) days after discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 5.20.5 In no event shall King County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

5.21 NO EMPLOYMENT RELATIONSHIP. In providing services under this Agreement, RNLL is an independent contractor, and neither RNLL nor its officers, agents, employees, or subcontractors are employees of King County for any purpose. RNLL shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law. King County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of RNLL, its employees, subcontractors, and/or others by reason of this Agreement.

5.22 RNLL INDEMNIFICATION AND HOLD HARMLESS.

- 5.22.1 RNLL shall protect, indemnify, and hold harmless King County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (a) RNLL's failure to pay any compensation, wages, benefits, or taxes in connection with or support of the performance of this Agreement, and/or (b) RNLL's failure to pay for work, services, materials, or supplies to RNLL employees or other RNLL suppliers in connection with or support of the performance of this Agreement.
- 5.22.2 RNLL further agrees that it is financially responsible for and will repay King County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure for any reason to comply with the terms of this Agreement by RNLL, its officers, employees, agents, representatives, or subcontractors. This duty to repay King County shall not be diminished or extinguished by the prior termination of the Agreement.
- 5.22.3 RNLL expressly agrees to protect, defend, indemnify, and hold harmless King County, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and judgments) for damages arising out of injury to persons or damage to property where such injury or damage is caused by, arises out of, or is incident to RNLL's activities pursuant to this Agreement. RNLL's obligations under this Section shall include, but not be limited to:
- 5.22.3.1 The duty to promptly accept tender of defense and provide defense to the King County at RNLL's expense for claims that fall within this Section 5.22;
- 5.22.3.2 Indemnification of claims, including those made by RNLL's own employees and/or agents for this purpose, for claims that fall within this Section 5.22;
- 5.22.3.3 In the event King County incurs any judgment, award, and/or cost arising from claims that fall within this Section 5.22, including attorney's fees to successfully enforce this Section, all such fees, expenses, and costs shall be recoverable from RNLL.
- 5.22.3.4 RNLL shall protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this Agreement by RNLL's subcontractor(s), its officers, employees, and/or agents in connection with or in support of this Agreement.

5.22.3.5 RNLL expressly and specifically agrees that its obligations under this Section 5.22 extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, RNLL, hereby expressly and specifically waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County.

5.22.3.6 In the event it is determined that RCW 4.24.115 applies to this Agreement or any portion thereof, the RNLL agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the RNLL's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or if applicable as defined by RCW 4.24.115, as now enacted or hereafter amended.

- 5.23 Waiver of any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County, which shall be attached to the original Agreement.
- 5.24 ADDITIONAL TERMS. The Parties reserve the right to modify this Agreement as necessary to equitably address unforeseen circumstances that may arise. The Parties agree to cooperate in good faith and in the spirit of this Agreement with respect to any such requested modifications. Except as provided in Sections 4.1 and 4.4 regarding annual updates of Master Schedules, any amendments or addendums to this Agreement shall be in writing and executed with equal formality as this Agreement and are subject to approval by ordinance.
- 5.25 DISPUTE RESOLUTION. The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises and cannot be resolved within two (2) days of the dispute occurring, the field development director of RNLL and the Community Partnership Grant (CPG) Program Manager from the Division shall meet in person, within four (4) days of the dispute arising, and work to resolve the dispute. RNLL and the Division shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that any design, planning, construction, or use of the Facility or the Site is not delayed or interrupted. Provided, that nothing in this Section 5.25 shall otherwise limit the Parties' legal, equitable, or other rights or remedies.

5.26 TERMINATION/NOTICE/CURE. In recognition that RNLL shall invest substantial funds to develop the Facility at the Site, and in appreciation that King County has fiduciary responsibilities to its residents and taxpayers that may change over time, the Parties agree that this Agreement may be terminated as follows:

5.26.1 FAILURE TO PERFORM.

5.26.1.1 OBLIGATION TO PERFORM. Nothing herein shall imply any duty upon King County to do any work required to be performed by RNLL in this Agreement, and the performance thereof by King County will not constitute a waiver of RNLL's default. King County will not in any event be liable for inconvenience, annoyance, and disturbance in its activities on the Site or the Facility, provided that King County will not intentionally permit a loss of business or other damage to RNLL by reason of King County's actions pertaining to the Site or the Facility.

5.26.1.2 PAYMENTS TO OTHER PARTIES. Except as expressly provided hereunder, all obligations of RNLL under this Agreement will be performed by RNLL at RNLL's sole cost and expense. If RNLL fails to pay any sum of money owed to any party other than King County for which RNLL is liable hereunder, or if RNLL fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days (10) after notice thereof by King County, King County may, without waving or releasing RNLL from its obligations, make any such payment or perform any such other act to be made or performed by RNLL. Thereafter, on written demand by King County, RNLL shall promptly pay to King County an amount equal to all sums so paid by King County, together with all necessary incidental costs incurred by King County, plus interest on the sum total of such sums and costs. For purposes of this Section 5.26.1.2, interest will be calculated at the lesser of 1 percent per month or the maximum rate permissible by law, beginning on the date that King County first makes a payment on behalf of RNLL. RNLL understands, acknowledges, and agrees that King County is under no obligation to make any payment on behalf of RNLL.

5.26.2 DEFAULT.

5.26.2.1 THE DIVISION'S DEFAULT. The Division will not be in default unless the Division fails to perform an obligation within sixty (60) days after notice by RNLL, which notice must specify the alleged breach; provided that if the nature of the Division's breach is such that more than sixty (60) days are reasonably required for cure, then the Division will not be in default if the Division commences to cure within sixty (60) days of RNLL's notice and thereafter diligently pursues completion and

completes performance within a reasonable time.

5.26.2.2 RNLL'S DEFAULT. The occurrence of any one or more of the following events constitutes a default by RNLL under this Agreement:

- (1) RNLL will be in default of the performance of any covenants, conditions, or provisions of this Agreement, other than the covenants for the payment of use fees required by this Agreement, where such failure continues for a period of sixty (60) days after written notice is given by King County; provided that if the nature of RNLL's breach is such that more than sixty (60) days are reasonably required for cure, then RNLL will not be in default if RNLL commences to cure within sixty (60) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
- (2) RNLL will be adjudged bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for RNLL's estate and such appointment is not vacated within sixty (60) days; or
- (3) If this Agreement is assigned or the Site or the Facility is used by RNLL for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from King County to RNLL; or
- (4) RNLL fails to make any payment when due, or fails to make any other payment required hereunder when due, when that failure is not cured within thirty (30) days after mailing of written notice thereof by King County.

5.26.3 TERMINATION FOR CHANGE IN RNLL STATUS. King County may terminate this Agreement without penalty or liability if, at any time during the Term of this Agreement, RNLL loses or changes its status: (1) as an active Washington not-for-profit corporation; or (2) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; or (3) as a little league club affiliated with Little League, or a similar governing body as now or hereafter constituted. Provided, that King County will not terminate the Agreement under this Section 5.26.3 if RNLL seasonably cures any and all such loss or change of status.

5.26.4 DEFAULT FOR OTHER CAUSE. This Agreement may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement, through no fault of the

terminating party, and the non-performing party does not commence correction of the failure of performance within sixty (60) days of the terminating party's sending notice to the non-performing party.

5.26.5 OTHER RNLL TERMINATION. RNLL may terminate this Agreement for any reason upon twelve (12) months' notice in writing to King County. In this event RNLL shall not be entitled to any compensation from King County for capital improvements made by RNLL to the Site.

5.26.6 OTHER KING COUNTY TERMINATION.

5.26.6.1 King County may terminate this Agreement without cause upon twelve (12) months' notice in writing to RNLL. In this event RNLL shall be entitled to reasonable compensation from King County for capital improvements made by RNLL to the Site with due regard for the funds invested by RNLL, RNLL debts remaining to be paid relating to the Facility, the fair market value of the Facility at the time of termination, and the length of time RNLL has had use of the Facility.

5.26.6.2 Any King County obligations under this Agreement beyond the current appropriation year are conditioned upon the King County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation year.

5.26.7 REMEDIES ARE CUMULATIVE. Remedies under this Agreement are cumulative; the failure to exercise any right on any occasion will not operate to forfeit such remedy.

5.27 DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS.

5.27.1 Unless otherwise mutually agreed by the Parties, if the Site or the Facility are destroyed or injured by fire, earthquake, or other casualty during the Design and Construction Phase, then RNLL will proceed to rebuild and restore the Site and the Facility, or such part thereof as may be injured or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, RNLL will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Facility and replace the improvements, fixtures, and equipment which may be damaged or destroyed by such casualty.

5.27.2 Unless otherwise mutually agreed by the Parties, if the Site and/or the Facility are destroyed by fire, earthquake, or other casualty after completion of the Design and Construction Phase, then King County will proceed to rebuild and

restore the Site and the Facility, or such part thereof as may be injured or destroyed to the extent of available insurance proceeds. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, King County will use the proceeds of such insurance policies first to rebuild and then to restore the Site and the Facility and replace the improvements, fixtures, and equipment which may be damaged or destroyed by such casualty.

- 5.28 DUTIES UPON TERMINATION. Upon termination of this Agreement, and unless otherwise arranged, RNLL will remove from the Site and the Facility all its personal property, goods, and effects. If RNLL fails to perform this duty at termination, the Division may cause such removal to be made and RNLL's personal property, goods and effects to be stored, the cost and expense to be paid by RNLL. It is understood and agreed that the real property constituting the Site and the Facility is the real property of King County and that all improvements to that real property will continue to belong to King County upon termination of this Agreement.
- 5.29 EMINENT DOMAIN. The following rules will govern the rights and duties of the Parties in the event of interference with RNLL's design, construction, or use of the Site or the Facility as a result of the exercise of eminent domain or private purchase in lieu thereof.
- 5.29.1 RIGHT OF TERMINATION. If the whole of the Site or the Facility is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then RNLL and King County will each have the right to terminate this Agreement on thirty (30) days' notice to the other," given within ninety (90) days after the date of such taking. Provided, however, that if King County is exercising its right of eminent domain, a fair value will be placed on this Agreement and the Facility with the compensation thereof awarded solely to RNLL.
- 5.29.2 NON-TERMINATION. If any part of the Site or the Facility is so taken and this Agreement is not terminated, then King County will, at its own cost and expense, restore the remaining portion of the Site and the Facility to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement.
- 5.29.3 COMPENSATION. The compensation awarded or paid upon a total or partial taking of the Site or the Facility, or this Agreement, or any of them, will belong to and be apportioned between RNLL and the Division in accordance with their respective interests under this Agreement as determined between them or by a

court. Additionally, RNLL may prosecute any claim directly against the condemning authority for the costs of removal of the goodwill, stock, trade fixtures, furniture, and other personal property belonging to RNLL. King County will have no claim to condemnation proceeds attributable to RNLL's interest in the Facility, nor will RNLL have any interest in King County's condemnation proceeds, if any.

- 5.30 SURRENDER. Within thirty (30) days of the time this Agreement expires or is terminated, RNLL shall remove any and all of its portable improvements at the Facility. If improvements include non-portable fixtures, such improvements shall inure to the benefit of King County and shall remain at the Facility.
6. HEADINGS NOT PART OF AGREEMENT. The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
7. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Washington, without regard to its conflicts of law rules or choice of law provisions.
8. JURISDICTION AND VENUE. The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity, and performance, shall be in the Superior Court for King County, Washington.
9. RIGHT TO PARTICIPATE IN LITIGATION. RNLL will have the right to participate in any litigation, arbitration, or dispute directly affecting the Site, the Facility, or interest of RNLL therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding, or insurance claim. King County, upon instituting or receiving notice of any such litigation, arbitration, or dispute will promptly notify RNLL of the same.
10. EXHIBITS.
- A. Description and map of Site and Facility
- B. RNLL Master Schedule for 2013
11. ENTIRE AGREEMENT. This Agreement and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between King County and RNLL. There are no terms, obligations, allowances, covenants, or conditions other than those contained herein. This Agreement supersedes any prior written or oral agreement between the parties.

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- 12. SEVERABILITY. Should any provision of this Agreement be found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date written.

Redmond North Little League

King County Parks and
Recreation Division

By _____

By _____

TITLE _____

TITLE _____

DATE _____

DATE _____

Approved as to form:
King County Prosecuting Attorney:

By _____

Name _____